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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL
 LITIGATION

Case No. 4:20-cv-03919-NC

**PLAINTIFFS' ADMINISTRATIVE
 MOTION TO CLARIFY ORDER
 RESOLVING DISCOVERY DISPUTE
 ABOUT DEFENDANTS'
 SUPPLEMENTAL INITIAL
 DISCLOSURES (L.R. 7-11)**

1 Plaintiffs hereby move this Court pursuant to L.R. 7-11 for an order clarifying that Defendants
 2 may not circumvent the Court’s Order Resolving Discovery Dispute About Defendants’ Supplemental
 3 Initial Disclosures, ECF No. 374 (“Order”), by seeking documents from two entities that the Court
 4 excluded. The Court held, among other things, that from Defendants’ list of twelve “newly relevant”
 5 witnesses, Defendants could select four of them to include on their supplemental initial disclosures,
 6 and the other eight would be “excluded under Rule 37 as not timely disclosed.” Order at 3. Pursuant
 7 to the Order, on October 13, Defendants disclosed four witnesses—Phil Andrews, Frank Busch, Rocky
 8 Harris, and Morgan Fuller Kolsrud (the “Selected Witnesses”)—as their “newly relevant” witnesses.

9 However, Defendants have also issued document subpoenas to *two additional entities*—Huron
 10 Consulting Group and Deloitte—that were listed among Defendants’ twelve original “newly relevant”
 11 witnesses but were not chosen as Selected Witnesses. These subpoenas contain return dates after the
 12 close of fact discovery. Plaintiffs objected to Defendants’ effort to obtain discovery from *six* of the
 13 twelve newly relevant witnesses as exceeding this Court’s Order, which limited Defendants’ untimely
 14 disclosures from this category to four in order to mitigate the prejudice to Plaintiffs. Defendants
 15 refused to withdraw their new document subpoenas, stating that this Court’s order “related to *witness*
 16 *disclosures*, not document discovery.” See Attachment A (Parties’ Email Correspondence) (emphasis
 17 in original).¹

18 Plaintiffs now seek clarification that this Court’s Order limits Defendants to relying on a total
 19 of four of the “newly relevant” disclosures for documents or witness testimony. Under Rule
 20 26(a)(1)(i), Defendants were required to disclose sources of “discoverable information—along with
 21 the subjects of that information—that the disclosing party may use to support its claims or defenses,
 22 unless the use would be solely for impeachment.” The disclosure requirement is not limited to witness
 23 testimony; it includes *all discoverable information*, including documents. Further, the parties’ joint
 24 letter brief specifically referenced Huron Consulting Group and Deloitte as among the twelve “newly
 25 relevant” witnesses, and Plaintiffs cited evidence that Defendants were aware for well over a year that
 26 each entity might have discoverable information. ECF No. 372-2 at 2, 5 n.12. As the Court noted in

27 _____
 28 ¹ Defendants initially sought document productions and 30(b)(6) testimony from Huron Consulting
 Group and Deloitte, but agreed to withdraw the deposition subpoenas after Plaintiffs’ objection.

its Order, the “problem” with Defendants’ late disclosures “is both the number (many) and timing (near the end of discovery) of these new witnesses.” Order at 3.

The prejudice to Plaintiffs is no less for document productions from untimely disclosed sources than it is for testimony. Indeed, document productions coming after the close of discovery may inflict *more* prejudice because Plaintiffs will not have sufficient opportunity to review the documents or seek additional documents or depositions in advance of their merits expert disclosures on December 1. Nor will Plaintiffs have the opportunity to ask party witnesses about the contents of these new documents. Defendants should not be permitted to evade this Court’s Order by offering testimony from their four Selected Witnesses while simultaneously securing documents from two additional ones. Plaintiffs ask that the Court issue an order clarifying that Defendants are limited to discovery from four total “newly relevant” disclosed sources and excluding any discovery, including document productions, from the other eight.

However, if the Court is inclined to allow Defendants to obtain and use documents from these two additional sources, Plaintiffs should be permitted to seek additional document discovery and depositions from them, and to take targeted supplemental depositions of previously deposed Defendant witnesses to question them about new information obtained from these new sources. To allow Plaintiffs proper time to consider the documents, determine the necessary additional discovery, and to keep the case schedule on track, Plaintiffs should be allowed to take this discovery up until the deadline for their merits expert reply, February 23, 2024.

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